

### Claim Rejections Under 35 USC §103

The 07/11/03 Office Action indicates that claims 1-101 are rejected under 35 USC § 103(a) as being unpatentable over Joseph Rubinfeld et al. in the article "Structure and Performance Property Relations of Straight Chain Alkyl Benzenes", stating:

"Rubinfeld et al disclose 2-phenyl alkyl benzenes in an amount from 20-35% and adjunct materials such as sodium sulfate or sodium tripolyphosphate and moisture (pg. 33). Rubinfeld et al teach C11-C15 chain lengths, varying for light and heavy duty formulations (see abstract).

Rubinfeld et al states about 90% 2-phenyl isomer, however, it would have been obvious to encompass applicant range of 2-phenyl position isomers because (compounds having the same radicals in physically different positions on the same nucleus) or homologs (compounds differing regularly by the successive addition of the same chemical group, e.g., by -CH<sub>2</sub>- groups) are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties. In re Wilder, 563 F.2d 457, 195 USPQ 426 (CCPA 1977). See also In re May, 574 F.2d 1082, 197 USPQ 601 (CCPA 1978)."

After successfully arguing around three different rejections under 35 USC § 103 in three separate Office Actions in the present case, Applicants find it easy to recall that with regards to the making a *prima facie* case of obviousness under 35 USC §103(a), the Manual of Patent Examining Procedure section 706.02(j) sets forth the three basic criteria which must be met:

- "1) There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
- 2) there must be reasonable expectation of success; and
- 3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based upon applicant's disclosure."

The statement that provides the reason for the alleged obviousness in the 7/9/03 Office Action is found after the word "because" in the paragraph numbered 4. on page 2 of the 7/11/03

Action is found after the word "because" in the paragraph numbered 4. on page 2 of the 7/11/03

Office Action, which states:

"....because (compounds having the same radicals in physically different positions on the same nucleus) or homologs (compounds differing regularly by the successive addition of the same chemical group, e.g., by -CH<sub>2</sub>- groups) are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties."

Thus, the premise upon which Office Action alleges that Applicants' invention is obvious is because moving the phenyl group to different positions on the hydrocarbon chain are presumed to yield compounds having similar properties, and that one of ordinary skill would thus be motivated to modify the reference to meet Applicants' claims.

However, this presumption is in direct contradistinction to the whole point of the Joseph Rubinfeld et al article, which was to illustrate the actual differences in performance between the various positional isomers of LAB sulfonates. Therefore, Rubinfeld was motivated to show that there were differences in qualities of the various isomers, which he did in fact prove. The very fact that Rubinfeld proves the existence of and discusses the differences between the various isomers set forth therein negates the use of the reference to show the "presumed expectation that such compounds possess similar properties" relied upon in the Office Action as a basis of the 35 USC 103 rejection ! Using a reference which proves differences in the properties of isomers cannot also be used as a basis to also show that they are the same. Especially when other prior art supports the differences between the isomers. Thus, the references 3,342,888; 3,387,056; and 3,509,225 (all cited as prior art in the present case) all teach that higher amounts of 2-phenyl isomer in a linear alkylbenzene sulfonate is undesirable. (US 3,342,888 at col. 2, lines 39-41; US 3,387,056 at col. 2, lines 21-24; US 3,509,225 at col. 1, lines 59-62 et seq.). These three

references also prove that the presumption upon which the latest rejection under 35 USC § 103 is based, namely the presumed expectation that such compounds possess similar properties, is patently false. The facts on record show that these materials behave differently, and that the prior art teaches away from Applicant's claimed invention. The present claims 1-101 must be passed on to issue immediately. What more is necessary ?

The provisional double patenting rejection in this case should be withdrawn and the case allowed to issue, and actual double patenting rejections be made in the two other cases cited in the 7/11/03 Office Action, per the instructions in the second paragraph of MPEP 804(I)(B).

respectfully submitted,

A handwritten signature in cursive script, appearing to read "Chris Whewell".

Christopher J. Whewell, Reg. No. 37,469  
Austin, Texas